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TO:	Vicki Rippie
COMPANY:	State of Washington Public Disclosure Commission
FROM:	James D. Oswald
DATE:	February 20, 2001
FAX NUMBER:	360-753-1112
PAGES INCLUDING COVER:	26
RE:	Opposition of WSLC to Petition for Rule Making

COMMENTS: Attached please find the Washington State Labor Council's Opposition to Rulemaking re WAC 390-16-309 and WAC 390-16-311. I understand from our discussion of February 14 that you will be providing this Submission to the Commission in advance of the February 27 meeting.

Opposition to Petition for Rulemaking Regarding WAC 390-16-309 and WAC 390-16-311

Introduction

This Opposition to Petition for Rulemaking is submitted on behalf of the Washington State Labor Council.

The Petition, submitted by Robert Edelman of Evergreen Freedom Foundation, is an attempt to have the Commission reopen an issue that it examined exhaustively some seven years ago. The Rules the Commission adopted after that extraordinarily rigorous process are proper and would certainly survive any judicial challenge. The petition should therefore be rejected. This memorandum will outline why the reasoned decisions by the Commission are valid, and will discuss several profound legal and factual errors embodied in the Petitioner's memorandum.

A. The Rules Adopted in 1994 are Entitled to a Strong Presumption of Validity

The Petitioner's claim "that the PDC lacked the authority" to promulgate WAC 390-16-311 is plainly wrong. RCW 42.17.370 authorizes the Commission to promulgate suitable administrative rules to carry out the policies and purposes of Title 42, Chapter 17.[1] Such administrative rules are necessary to "fill in the gaps" in Initiative 134.[2]

Administrative rules that the agency is authorized to make are presumed valid, and will be upheld on judicial review unless the party attacking the validity of the rule

[1] *State of Washington ex rel Evergreen Freedom Foundation v. Washington Education Association ("EFF v. WEA")*, 140 Wash.2d 615, 634 (2000).
[2] Id.

shows compelling reasons the rule is in conflict with the intent and purpose of the legislation.[3] This has also been called the arbitrary and capricious standard, whereby the agency's action is sustained unless the agency engaged in willful and unreasoning action without consideration and in disregard of facts and circumstances.[4] The Commission's approach to the creation of WACs 390-16-309 and 390-16-311 was the antithesis of arbitrariness. The Commission engaged in a process that stretched over some eight months, including at least six public hearings. The Commission also received and considered written materials from entities on all sides of the question before making its Rules. As the Assistant Attorney General advising the Commission noted, this ultimately was not a controversy in which the Commission could create a Rule that would satisfy all parties.[5] But that there is room for disagreement as to the result reached does not make an agency action arbitrary, or subject to reversal.[6]

As the Supreme Court noted in the recent EFF v. WEA case, regulations adopted in 1993 and 1994 to implement Initiative 134 were "nearly contemporaneous with the passage of the statute," and are entitled to "great weight."[7] This is true especially because in the intervening seven years, the Legislature has not repudiated that contemporaneous interpretation.[8] The fact that the Legislature has amended Initiative 134 in other particulars without disturbing the administrative interpretation adds greater weight to the conclusion that the Commission's construction is valid.[9] The assumption

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[3] Id., at 635.
[4] *Hi-Starr, Inc. v. The Liquor Control Board*, 106 Wash.2d 455, 458 (1986).
[5] Memorandum to Commission from AAG Marcus, Feb. 9, 1994. (Exhibit A to this Submission.)
[6] *Hi-Starr*, 106 Wash.2d at 464.
[7] *EFF v. WEA*, 140 Wash.2d at 635, citing *Green River Comm. College v. Higher Ed. Personnel Bd.*, 95 Wash.2d 108, 117-118 (1980), modified 95 Wash.2d 962 (1981).
[8] Id., at 636.
[9] *Green River Comm. College*, 95 Wash.2d at 117-118, citing *Bradley v. Department of Labor & Industries*, 52 Wash.2d 780, 786-87 (1958).

that the Legislature has knowledge of the Rules and by inaction impliedly acquiesces in the interpretation applies even more strongly here, because the Initiative was sponsored by senators from one political party,[10] and the rules implicate the campaign process, with which all legislators are familiar.

It is against this strong presumption of validity that the Commission should evaluate the Petitioner's arguments.

B. WAC 390-16-309 is a Reasonable Construction of an Ambiguous Statute

The Petitioner incorrectly suggests that RCW 42.17.660(2) is unambiguous, and requires the construction he advocates. Petitioner makes this remarkable claim because where Initiative 134 is ambiguous, the Commission's interpretation is entitled to great weight.[11] But the language in the first sentence of 660(2) is manifestly ambiguous. It states:

> (2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation, or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association.

The only thing that is clear from the sentence is that only one of the entities being addressed with respect to labor unions,[12] is a "local unit . . . of a . . . labor union." The statute does not state what the "other" is. On the face of the statute, it could be creating affiliation between a local unit of a labor union and a day care center. To avoid absurd results, the Commission has inferred that the "other" must have some characteristic in

[10] *EFF v. WEA*, 140 Wash.2d at 620, 636.
[11] *EFF v. WEA*, 140 Wash.2d at 635-36, 640.
[12] For simplicity, this Submission focuses entirely on labor unions, although other types of entities are addressed by the statute and regulations.

common with the entity with which it is joined. In light of this inference, the Commission concluded that the most logical reading is that two or more union entities are treated as a single entity if one of the entities is a local unit of a labor union and the other is something other than the local unit of a labor union.

WAC 390-16-309(1) accurately reflects the language of the first sentence of 660(2) by looking at a local unit and bodies above the local unit and limiting that vertically affiliated group to a single contribution limit. Thus, if a level above the local unit contributes, it affects all local units. However, if a local contributes, it does not, per se, affect the limits of other local units. The comments by Vicki Rippie at the October 1993 PDC meeting leave no doubt that 309 was intended to create per se vertical affiliation between a local and a state council or international union, while "local organizations themselves are not automatically affiliated unless they meet the factors set out on the rule."[13] A similar discussion took place at the February 22, 1994 meeting where the proposed rule was approved. In describing the application of 309, and consideration of 311, Ms. Rippie stated that if one of three locals contributed the maximum, and the state and international did not contribute, "the other two local organizations, absent other affiliating factors, are not exhausted. They still have their own limit at this point."[14]

C. Petitioner's Arguments Against WAC 390-16-309 Rely On Disingenuous Presentation of Legislative History and Misinterpretation of Related Regulations.

[13] Transcript of Oct. 26, 1993 PDC meeting, at page 2-3. (Excerpts of the transcript are included as Exhibit B to this Submission.) The transcript provided by EFF is not official, but appears accurately to reflect the statement of Ms. Rippie.

[14] A partial transcript of the February 22, 1994 Commission meeting was prepared by WSLC's council, and is Exhibit C to this Submission.

Petitioner has proposed changes to WAC 390-16-309 to embody his preferred rewriting of the first sentence of RCW 42.17.660(2). He would prefer that the statute require that all entities within an international union, including the international union's state bodies and local units, are treated as one entity. But the statute does not say that. The job of the PDC is not to rewrite the statute, but to implement the statute as written. As the Assistant Attorney General Marcus wrote, in a February 9, 1994 memorandum to the Commission, while "the intent and purpose of Initiative 134 was taken into account when drafting [WAC 390-16-309], the Commission can only implement that which was passed. The Commission cannot change or correct that which the Initiative failed to include."[15]

Petitioner suggests that the "Legislative history" of the Initiative supports his interpretation. It does not. To determine the legislative history of an initiative, courts look to the official Voters' Pamphlet.[16] However, the Petitioner does not present any evidence from the Voters' Pamphlet. Instead, he attempts to misrepresent the Report entitled "Analysis of HI 134," prepared by the House State Government Committee.[17] Petitioner juxtaposes the general statement in the Report with the Petitioner's own diagram, to create the illusion that the House Report embodies his diagram.

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[15] Exhibit A to this Submission. The Petitioner presents a quotation from Ms. Marcus at page 9 of his memorandum, claiming that it "indicate[s] a willingness to achieve a result contrary to the law." In fact, the quotation is part of a recitation by Ms. Marcus of her discussions with stakeholders. Petitioner attempts to mislead the Commission into believing Ms. Marcus is expressing her own views by inserting an elipses where the words "we had the argument that" appear on the tape. When those words are inserted, it is clear that Petitioner has unfairly impugned Ms. Marcus' objectivity in this process. Although the Petitioner provided the PDC with transcripts of the August and October, 1993 meetings, he did not provide a February 22, 1994 meeting transcript, which would have revealed this attempt to mislead the Commission. This portion of Ms. Marcus' comments at the February 22, 1994 Commission meeting are included in Exhibit C to this Submission.

[16] *EFF v. WEA*, 140 Wash.2d at 636-37.

[17] Exhibit D to this Submission.

In fact, the Report is not supportive of Petitioner's argument that all units of a labor organization are joined. It states simply that:

> "Special rules are established for . . . determining when a contribution by one entity is to be treated as a contribution by a controlling entity."[18]

This quotation indicates that affiliation is based on control. This is consistent with WAC 390-16-309, which provides that affiliation does not run between two local unions unless one exercises control over the other.

Petitioner argues that the current text of WAC 390-16-310(6) reflects that WAC 390-16-309 is intended to create affiliation among all entities within an international union. As discussed above, a transcript of the Commission's meetings clearly reflects that 309 is not intended to impose affiliation between locals, absent additional factors. In addition, Petitioner's argument disregards both the language of WAC 390-16-310(6) and the overall structure of 310.

WAC 390-16-310(6) states:

> (6) the limitations on contributions shall apply <u>separately</u> to the contributions by an entity (corporation, subsidiary or branch, national union and local unions, collective bargaining organizations and local units, membership organizations and local units, and other organizations and their local units) pursuant to the standards set forth in WAC 390-16-309. (Emphasis added.)

The presence of the word "separately" indicates that the purpose of the provision is to indicate that the entities identified, for example, local unions, maintain <u>separate</u> contribution limits pursuant to the standards in WAC 390-16-309, not that they are automatically subject to a single limit under that Rule. This conclusion is reinforced by examination of the other subsections of 310, which focus on entities having separate

[18] Id, at p. 3.

limits, including spouses (310(2)), and partnerships and partners (310(5)). Subsection 6 likewise indicates that the entities addressed maintain separate limits under 309.

Petitioner suggests that affiliation among locals is compelled because there are some similarities between the second sentence of 660(2) and a portion of USC 441a(a)(1). But Petitioner ignores the difference in language between 660(2) and the federal statute. The second sentence of 660(2) states:

> "All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a . . . labor union . . . or the local unit of a . . . labor union . . . are considered made by the same entity." (Emphasis added.)

As with the first sentence of RCW 42.17.660(2), the language focuses on the relationship between a local unit and the union, rather than creating a common limit on any and all local units of the labor union.

This contrasts with the federal statute, which provides that "all contributions made by political committees established or financed or maintained or controlled by any . . . labor organization . . ., including any . . . local unit of such . . . labor organization . . ., shall be considered to have been made by a single political committee." (Emphasis added.) The federal language clearly contemplates attribution of contributions by any unit to all units rather than contributions by the local unit to an intermediate body.

While it is true that federal law is persuasive precedent when the Court is interpreting state and federal statutes with similar provisions,[19] where different language is adopted, it is assumed that different results are intended.[20] Here the difference is readily explained by the fact that the drafters of the state statute sought a more modest goal than the federal statute, namely to create vertical affiliation between locals and

[19] *Green River Comm. College*, 95 Wash.2d at 120.

intermediate and national bodies, but not to create universal affiliation among all locals of a labor organization.

This interpretation is not strained or absurd. It advances the statutory purpose by preventing an international union or intermediate body from contributing to a campaign and increasing its influence by having another contribution made by a local unit that is possibly under its control. Initiative 134's drafters and supporters could reasonably have sought that result, while not imposing a single limit on two local units, which did not control one another. Of course, the construction advanced by the Petitioner would further curtail contributions by labor organizations. However, that one of the purposes of Initiative 134 was to limit large organizational contributors cannot justify imposing unstated prohibitions on campaign activity by labor organizations.[21]

D. WAC 390-16-311 is a Tightening of 309, Which Protects Against Improper Coordination of Contributors.

Petitioners object to WAC 390-16-311 as a weakening of 309. In fact, 311 broadens 309 by conditionally imposing a single contribution on all locals of an international union, a result that is not consistent with the statute, nor mandated by the current language in 309. However, 311 then mitigates that over-broad rule by imposing local union to local union attribution only if an entity above the local unit participates in an election campaign.

Contrary to Petitioner's arguments, 311 does not relax the standards in RCW 42.17.660(2) or in WAC 390-16-309. As Ms. Rippie explained at the February 22, 1994 Commission meeting, 390-16-311 was drafted in response to the Commissioners' request

[20] In re *Swanson*, 115 Wash.2d 21, 27 (1990).

that staff "tighten up to a certain extent the affiliation factors."[22] The provisions of 311 identified other ways a state council could "participate" without giving a contribution. By conditionally imposing a single contribution limit on all locals within the same state council, 311 extends the reach of RCW 42.17.660(2), which does not create horizontal affiliation. It then mitigates that otherwise improper extension by acknowledging that no horizontal affiliation occurs if the international and intermediate bodies do not participate. In addition, the acts that constitute participation under 311 are far more extensive than what would arguably be encompassed by the terms "finance, maintain, or control."

Thus, § 311 imposes contribution limits where neither the single entity requirements of the first sentence of 660(2), nor the finance, maintain, and control factors implicated in the second sentence of 660(2), are present. By going beyond those standards, 311 attempts to implement the overall purpose of the statute by assuring that large organizations – namely international unions or state councils – do not enhance their power by coordinating or directing activities of local units.

The Commission should reject Petitioner's suggestion that the decision to adopt WAC 390-16-311 was the result of a misunderstanding of federal law, or that the WAC failed accurately to reflect the opinion of the Commissioners, who unanimously voted for its adoption. Petitioner suggests that a single sentence uttered by counsel for the WSLC at the first public hearing in August of 1993, caused the PDC to misunderstand federal law when it adopted WAC 390-16-311 in April 1994. As the Commission knows, there were at least five public hearings on affiliation rules between August 1993 and April

[21] EFF v. WEA, 140 Wash.2d at 638-639.
[22] Exhibit C.

1994. More important than the passage of time is that during these months these issues were exhaustively researched and analyzed by the PDC staff, by the Assistant Attorney General representing the Commission, and by interested parties. It is inconceivable that the Commissioners were relying on a misunderstanding of federal law when they ultimately adopted WAC 390-16-311.

Likewise, comments by individual Commissioners at the meeting in August of 1993, which occurred at the very beginning of this process, do not indicate that the any Commissioners continued to hold the same views when the Commission unanimously adopted the Rules at issue here.

E. Petitioner's Factual Complaint is Not a Valid Basis to Abandon Validly Promulgated, Long Established Regulations

Ultimately, the Petitioner asks the Commission to legislate by anecdote. He contends that because several locals of the LIUNA contributed to candidates, the regulations must be modified. If those contributions had been the result of coordination by an intermediate body of the Laborers' state council, they would have been improper under § 311. The Petitioner has never alleged, either in his original complaint regarding those contributions, or in this petition, that there was coordination. Having failed to allege or prove impropriety, the Petitioner wants to change the Rules. To advance the agenda of his own organization, he asks the Commission to overturn presumptively valid regulations that have operated effectively, and without judicial or legislative objection, for seven years.

Conclusion

Because the regulations reflect a correct construction of the underlying statute, and are well within the authority of the Commission, the Petition should be rejected.

Respectfully submitted this 20th day of February, 2001.

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Christine O. Gregoire

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M E M O R A N D U M

February 9, 1994

TO: Members, Public Disclosure Commission

FROM: Roselyn Marcus, Assistant Attorney General

SUBJECT: "Affiliated Entities" Under RCW 42.17.660

RCW 42.17.660 sets forth the requirement that affiliated entities are subject to one contribution limit. Subsection (2) specifically provides, in pertinent part, that:

> (2) Two or more entities are treated as a single entity if one or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch or affiliate of a trade association, labor union, or collective bargaining unit...

In order to implement this provision, it is necessary to provide standards as to when two or more entities are to be treated as one entity for the purposes of contribution limits.

Staff has met with various interest groups and circulated proposed draft rules concerning this subject. These same groups have also testified before the commission on numerous occasions, expressing their views of what this section means and how the commission should implement it. One thing has become abundantly clear, depending on who you are, the interpretation differs greatly. I firmly believe and the commission should understand, that there is no way in which the commission can implement this section to the satisfaction of all parties.

There is one thing upon which all parties seem to agree; the rule for affiliation should be clear. Fewer factors which clearly designate affiliation is preferred over a mere laundry list of factors which can be considered and weighed. This draft attempts to accomplish this requirement.

Attached is the latest draft of the proposed rule on affiliation. The intent and purpose of Initiative 134 was taken into account when drafting this rule. But the words of the Initiative itself were also considered. As I have said on more than one occasion, the commission can only implement that which was passed. The commission cannot change or correct that which the Initiative failed to include.

EXHIBIT A p1

ATTORNEY GENERAL OF WASHINGTON

The commission will again discuss this issue at the February meeting and again allow public comment. Because this is a complicated area and because any decision will have a major impact on many groups, more discussion and testimony on this issue has been allowed than that done on any other issue (with maybe the exception on the rule dealing with exempt contributions). But the testimony and disagreements are not going to change with time and standards need to be put in place with the coming 1994 election. Therefore, the staff requests that the attached rule, or an amended version be approved for publication for rulemaking hearing and possible permanent adoption in April, 1994.

In addition, WAC 390-16-308(5)(d)(i)-(x) set forth factors to determine if a subsidiary, union subdivision or subdivision of an association or other similar entity is "controlled" by another entity. Since this is redundant with the new proposed rule, staff request to amend WAC 390-19-308, deleting this section. Then, in WAC 390-16-310, the reference to WAC 390-16-308 would be amended to reference 390-16-309.

I will be available to attempt to answer any questions you may have regarding this issue.

ROSELYN MARCUS
Assistant Attorney General
(206) 586-1913

:RM

EXHIBIT A p2

WAC 390-16-309 Identification of Affiliated Entities

(1) Two or more entities are treated as a single person and share one contribution limit under RCW 42.17.640 if one of the entities is:

(a) A corporation and the other is a subsidiary, branch or division of the corporation;

(b) A national or international labor union, or state body of such national or international labor union, and the other is a local union or other subordinate organization of such national or international labor union or state body;

(c) A trade association or state body of such trade association and the other is a branch or local unit of such trade association;

(d) A national or state collective bargaining organization and the other is a branch or local unit of such national or state collective bargaining organization;

(e) A national or international federation of labor unions, or a state federation of labor unions, and the other is a local body of such federation;

(f) A membership organization and the other is a local unit or branch of such membership organization.

(g) Any entity referenced in (a) through (f) above and a political committee established, financed, maintained or controlled by that entity.

(2) For purposes of RCW 42.17.640, if a person's only connection with another entity is that the person is a member of the entity through the payment of membership dues, the person and the organization to which it is a member are not a single entity.

(3) In addition to paragraph (1) above, two or more entities shall be treated as one entity and share a contribution limit under RCW 42.17.640 if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one of the following factors:

(a) Whether one entity owns a controlling interest in the voting stock or securities of another entity; or

(b) Whether one entitiy has authority or the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure or has authority or the ability to hire, appoint, demote or otherwise control, other than through a vote as a member, the officers or other decision making employees or member of another entity; or

(c) Whether one entity has a common or overlapping membership with another which indicates a formal or ongoing relationship between the two organizations or which indicates the creation of a successor entity and the entity has an active or significant role

EXHIBIT A p3

in the formation of the other entity and the entities have similar patterns of contributions or contributors which indicate a formal or ongoing relationship between the entities; or

(d) Whether one entity provides, without renumeration, funds, services or goods in a significant amount or on an ongoing basis, other than the payment of membership dues, through direct or indirect means to the other entity, or the entity causes or arranges for, without renumeration, funds, services, or goods in a significant amount or on an ongoing basis to be provided to another entity and the entities engage in joint fundraising activities.

EXHIBIT A p4

REGULAR COMMISSION MEETING
October 26, 1993

?: WAC 390.16.309 – Identification of affiliated entities

? This rule was published pursuant to your direction after discussion in public testimony was received on how to identify when two entities are affiliated, and this deals with the induction of Initiative 134 that is, that seems to prevent PAC ??? and that is 42.17.660. We, the Commission had previously talked about how certain entities are affiliated because of their vertical structure, then we went on to list, for those entities that would not be automatically affiliated, what criteria would we look at in order to determine if two entities should be treated as one, and therefore only have one contribution limit between the two of them. I am going to turn this over to Vicki.

RIPPIE: First I will give you the sign up sheet, and I have a few introductory remarks.

? Alright.

RIPPIE: What we are suggesting you do at this point, is not at 309, or 16.309 but give us further direction. We wanted to double check that we properly understood the direction that was given in August, and then as we talked about last month, we think it's appropriate to extend the same kind of treatment that are given trade associations, labor unions, and collective bargaining organizations regarding affiliations to other membership organizations, as well as, and that would be the council of churches, business trade, you know businesses associations, national rifle association, any entity that is a membership organization would be automatically affiliated through it's national, state and local organizations, that would be the attempt to rewrite the rule, to put in one rule, the treatment of those entities as well as trade associations etc. We also think that it would be appropriate to through into the mix the political action committees of those entities such as those that they would share a limit, the PAC and the entity that formed it would share a limit and we think we can do

EXHIBIT B p1

that best in one rule as opposed to people who are trying understand this law flip through two or more rules that essentially try to capture the same thing. So, with the understanding that at this point we would like an opportunity to rewrite 16.309, and include more contributors if you will and I would also like to discuss what we think you did before so that we know we're on the right track when we come back to you with this new rule. If I might proceed, on the, I passed out to the audience these colored charts, so if you can't see I'm speaking now to the information on the blue piece of paper. We think this represents the simplest form of automatic, sometimes call persay affiliation that you spoke to in August, whether it's a union, a trade association or a collective bargaining association, this is what we heard you to say. First we have the international group which is automatically affiliated with the state organization, and the state organ, then each of these is affiliated with each of the local organizations. The statute itself speaks to local units of a union trade association or collective bargaining organization. Actually both the state and the local organizations would be considered local units under that phraseology, but we heard you to say that this local organization is affiliated with the state and the international, this organization is affiliated with the state and the international, and the same for the third in this example. However, this, the local organizations themselves are not automatically affiliated unless they meet the factors that were set out in the rule. Moving on in complication, we now have an international, several state local units and then each of those local units, again, have entities under them. Again, if we understood the direction from August, is that the international is affiliated with each of the state local units, we'll call it state councils, one two and three. State councils one, two and three ??????? with each other, so in other words, we call that there is no automatic horizontal affiliation and the same with the local units that fall under each of the state councils, that the councils, the local units are affiliated for purposes of contribution limits with the state council, but not necessarily among each other. What this means pictorially, we have gone

EXHIBIT B p2

through some scenarios and this is at least for purposes of explanation, this is the most complicated, its not the most complicated it gets, but it's the most complicated we chose to make it, and this is the kind of rule that we would want to write, something that for all membership organizations affiliates automatically the organization and each of their PACs but still maintains the direction that we received from the Commission about vertical affiliation but not horizontal, so we have an international, a state organization and in this example, three locals and then each of those locals has a PAC. This is what we think you all told us in August and we are here to be certainly advised differently if we misunderstood. If the international organization itself and or it's PAC give either signally or in combination the maximum limit, say $500, all of the rest of these organizations are done. Their contribution limit is depleted by the fact that the international or its PAC participated in the contribution. Summarily if the state organization and or it's PAC signally or in jointly give the maximum, it goes both up and down each of those entities have exhausted their ability to give. The third scenario is if a state PAC in combination with a local PAC reaches the limit, either in this way it would be a combination, each of those local PACs and the state organization and the international organization would be concluded from giving anymore. And finally and most controversially, if a local organization in conjunction with its local PAC singly, or jointly, makes a contribution we heard you to say that the state and the national and or its PACs are depleted with respect to the contribution limits. But so long as they stay out of the contributing picture, this local organization and its PAC and this local organization and its PAC would still have the ability to give up to the maximum limit. Their contribution limits would not be compromised. That's what I understood you to say, this is what people are here to talk about today, the fact that in their mind, the intent of the initiative was to capture all of these local units under one umbrella contribution limit and staff agrees certainly that the statute could be read that way, that the initiative could be read that way, but we also

EXHIBIT B p3

contend that it may be appropriately read the way that we understood you to interpret it. At this point we are looking for further direction, and we wanted to give people one more opportunity to comment. Thank you.

?: That's a very good job, you certainly clarified in all of our minds, I think all of the decisions that we made.

?: I thought that was an ingenious way of showing those.

RIPPIE: You can attribute that to our acting assistant direction, overlays is the way to do it, it worked.

?: Very well, we do have several people who have asked to testify. Sam Kindle. I would like to suggest that we try to limit our testimony today to new things or comments that would, that are additional because we have spent a lot of time and have a lot to do today. Thank you.

KINDLE: I got your message madam chairman. My name is Sam Kindle, I represent the Washington State Council of County and City Employees, and with the recommendation of the chairman to be brief, and listening to the staff I think I want to be brief in that if I understand what the staff has said in this presentation, we would urge you to reinforce the staffs understanding of what you did at the August meeting. Specifically, the charts aren't up there anymore, but we were concerned with the yellow draft and if I, if I understand what the staff has said to you, that they understood that you indicated to them at the meeting in August that this would be your interpretation of this particular item we would just mearly urge you to reinforce that or that the staff is correct in their interpretation. So you don't have the colors.

?: We need to know which one...

RIPPIE: Madam chair, I didn't speak to this one because it is, it discusses the relationship between unions and a membership organization to which they belong. In other words, it was discussed last time, this would be a union who is a member of a association frequently referred to as the Washington State

EXHIBIT B p4

Partial Transcript of PDC Meeting 2/22/94

Vicki Rippie - Re: Affiliated Entities and Contribution Limits
Counter #168-234 Side A

This is the simplest scenario and it calls for a national or international organization underneath a subordinate state organization and then under those two entities, in this case there are three local organizations, and we talk about vertical affiliation, the national or international being affiliated with the state who is then affiliated with each of the locals, but absent including the other test, the locals would not be affiliated with each other based on what we understand to be direction from you and the way you have interpreted it.

In this scenario, similarly, an international would be affiliated with each of a state's organizations, if there were more than one, and each of those states would be affiliated with each of its own local units, but not with the local units of another state entity and the local units would not be affiliated with each other automatically, nor would the state entities be affiliated with each other automatically.

This is the rule as it now stands, including the PACs that an entity may have established. Again, we have an international and its PAC, and a state and its PAC, and three local organizations and their separate individual PACs. Under the rule as written as staff has interpreted it and what we would like your concurrence with is that each of the entities in this PAC are essentially one person, and they will be treated in that regard. Each....the international and its PAC, the state and its PAC, and the local organization and its PAC. And it certainly is true that the vertical affiliation then works as well. So, the international and its PAC is affiliated with the state and its PAC and, on down.

[Another voice questioning: "and basically if an international makes a contribution, nobody else can?"]

Ms. Rippie: "That's true"

[Another question: "but if the international doesn't, then the state can."]

Ms. Rippie: If either the international or the federal PAC makes a contribution of $500 to a given state office candidate, the other entities below it with the blue checkmarks are all affiliated. They are all exhausted, I should say, because the entity at the top gave.

Similarly, if a state organization singly, or in conjunction with its state PAC, contributes $500 to a state office candidate, vertically the international is done as are the local organizations and their PACs. They are maxed out.

In this scenario, a local organization in conjunction with its local PAC has contributed the maximum, and hence the state organization, the state PAC, the

EXHIBIT C p1

international and the federal PAC are maxed out. They are exhausted. Their contribution limit is done. But the other two local organizations, absent other affiliating factors, are not exhausted. They have still their own limit at this point.

How the other organizations would get exhausted is if either the international or the state organization or its PAC did not stay out of the contribution picture, or did other things to give direction to a local organization. And that's depicted here.....the state PAC has given $250 to a given candidate and a local PAC has given $250 to a given candidate. That's $500 jointly, and hence everybody is done because the state PAC participated and demonstrated its preferences this time by way of giving money. The second memo that Ro and I wrote addresses other considerations that we'd like you to think about in terms of direction, whether direct or indirect, from a state PAC to the local organizations, such that the local organizations could not be sufficiently independent to still have their own limit. So, it's a new twist. You ask them to tighten up to a certain extent [pause] the affiliation factors especially, as we saw it for this automatic test for affiliation and that's what we've tried to do. I'm not saying that they're perfect. You might certainly want to strike some of them, but they are the ones that we are offering for discussion. And I think, Ro, if there aren't any other questions, we'd be happy to talk about that now.

Ro Marcus – Re: Affiliated Entities
Counter #234-244

Ms. Marcus: Could you put it back to the last one before?

Ms. Rippie: This one?

Ms. Marcus: Right. The second memo dealing with staying out, deals with this situation. The discussion was if the state organization stays out of the election and the locals all keep their limit. And everybody seems to be very up in arms about that. But it seemed to be contrary to the provision in 134 that you're automatically affiliated and it doesn't matter if the state organization stays out or not. On the other hand, we had the argument that it just didn't seem fair or logical that if the organizations were separate independent entities and the state had stayed out of the race - that the locals, which each had their own maybe geographic areas and their own concerns, should be allowed to participate in the process to their fullest extent.

EXHIBIT C p2

ANALYSIS OF HI 134: FAIR CAMPAIGN PRACTICES

House State Government Committee — January 24, 1992

BACKGROUND

In 1972, the voters approved Initiative Measure No. 276 regarding public disclosure. One section of the initiative established mandatory expenditure limits on campaigns for elective office. In 1974, the state's Supreme Court found that section to be unconstitutional.

A series of federal court cases has identified a number of constitutional limitations on the regulation of campaign financing. Certain constitutionally permissible restrictions on such financing have also been identified in those decisions. In those cases, the courts found the following to be permissible: (1) limitations on contributions by individuals or organizations to candidates for federal office; (2) limitations on contributions by individuals or organizations to political action committees; (3) limitations on contributions by political action committees to candidates for federal office; (4) limitations on total contributions by individuals in a calendar year to candidates for federal office; (5) public financing for presidential elections; and (6) federal public disclosure requirements.

Found to be impermissible were ceilings on candidate expenditures or on "independent expenditures" (that is, campaign expenditures not subject to the control of a candidate). Upheld, however, were ceilings on candidate expenditures which become effective only as part of a public financing agreement under which a candidate agrees to abide by the limits in exchange for public financing. Also found to be impermissible were any ceilings on contributions or expenditures in ballot proposition campaigns.

SUMMARY

CONTRIBUTION LIMITS:

The following limits are established on the aggregate of contributions which may be made to or accepted by a candidate for state executive or state legislative office:

Contributor	To Candidate For	Limit
Caucus of Legislature or State Political Party	State Office	$0.50 times the number of eligible registered voters in the jurisdiction which elects the office holder (per cycle).
County Central Committee or Legislative District Committee	State Office	$0.25 times the number of or eligible registered voters in the jurisdiction (per cycle).
Any Other Entity	State Legislature Executive Office	$500 $1000

EXHIBIT D p1

The limits apply to the aggregate of contributions received from a caucus of the Legislature or a state political party during a 2 year or 4 year election cycle and to the aggregate of contributions received during such an election cycle from all county or district political party organizations combined. For contributions from any other person or entity, the limits apply separately for each time the candidate's name appears on a ballot for a primary or general election or a special vacancy primary or election. The limits also apply to officials and recall committees during a recall campaign. *(Section 4(1) - 4(4).)*

No person other than an individual, political party organization, or caucus of the Legislature may make contributions reportable under the disclosure laws: to a caucus of the Legislature, which in the aggregate exceed $500 in a calendar year; or to a political party organization, which exceed $2500 in a calendar year. *(Section 4(5).)*

Contributions from the following to a candidate for state office are prohibited:

- a corporation or business entity not doing business in this state;
- a labor union with fewer than 10 members who reside in this state;
- a political committee which has not received contributions of $10 or more from at least 10 persons registered to vote in this state during the preceding 180 days.

These restrictions also apply to recall campaigns. *(Section 4(10).)*

A county or legislative district committee of a political party may make contributions to a candidate for state office, a state official against whom recall charges have been filed, or to a committee supporting the recall of a state official only if the party committee is within the jurisdiction which is entitled to elect a person to the office. *(Section 4(11).)*

A committee making a contribution, other than an in-kind contribution, must do so by written instrument identifying the name of the donor and the payee. This restriction also applies to such contributions which exceed $50 and are made by an individual. *(Section 14.)*

Prior Contributions; Counting Contributions; Other Restrictions. Contributions made and received before the effective date of these requirements are governed by the same restrictions which apply to those given after that date. Such monetary contributions which exceed the limits and have not been spent by the recipient must be disposed of. *(Section 10.)*

Contributions received by a candidate committee may not be used to further the candidacy of the individual for any office other than the one designated in the committee's statement of organization without the written consent of the contributor.

Certain activities, contributions, and expenditures are not counted as contributions. These include: contributions or expenditures earmarked for voter registration or get-out-the-vote campaigns, for absentee ballot information, for precinct caucuses, for precinct election officials, for sample ballots or for ballot counting if there is no promotion of or advertising for individual candidates; certain costs of communicating with contributors to political parties or political action committees; and expenditures by a political committee for its internal organization or fundraising without direct association with individual candidates. *(Section 3(5)(b).)*

EXHIBIT O p 2

Contributions to an authorized committee of a candidate are considered to be contributions to the candidate. Special rules are established for contributions by minors, for regulating contributions made through a third party or intermediary, and for determining when a contribution by one entity is to be counted as a contribution by a controlling entity. *(Sections 4(6), 5-7 & 13.)* Loans are considered to be contributions, but certain loans, such as those made in the ordinary course of business, do not count toward the limits. *(Sections 4(5), 4(10) & 12.)* No person may reimburse another for making a contribution. *(Section 18.)*

Penalty. The penalty for violating a contribution limit or for violating the newly imposed contribution prohibitions is the greater of $10,000 or three times the amount of the contribution illegally made or accepted. *(Section 28.)*

Contributions During Sessions. Neither an official of the executive or legislative branch of state government nor an employee or person acting on behalf of such an official may solicit or accept campaign contributions in the 30 days before, during, or in the 30 days after a Regular Session or during a special session of the Legislature. *(Section 11.)*

Other. Contributions received by a candidate for any office may not be used to reimburse the candidate for loans of more than $3,000 made by the candidate to the candidate's own campaign. All entities, except individuals, which make contributions totaling more than $10,000 or independent expenditure totally more than $500 in a year must file with the Public Disclosure Commission an annual report similar to the report currently filed by employers of lobbyists. (The report filed by such an employer is also altered.) *(Sections 21 & 27.)*

PUBLIC FINANCING PROHIBITED:

Public funds may not be used to finance political campaigns for state or local office. *(Section 24.)*

USE OF CAMPAIGN FUNDS:

The campaign funds of a candidate may not be transferred to any other candidate or political committee nor may they be used for other political activities, community activities, or nonreimbursed public office related expenses. The provisions of law authorizing public office funds are repealed. *(Sections 20 & 35.)*

MAILINGS BY INCUMBENTS:

In the last year of the term of office of a state legislator, the legislator may make only two mailings to constituents at public expense, one near the beginning of a Regular Session and one within 60 days of the end of the Regular Session. This limitation does not apply to direct responses to constituent requests. The House and the Senate must specifically limit expenditures for the total cost of mailings for each member. *(Section 25.)*

EXHIBIT D p3

DEDUCTIONS AND POLITICAL ACTIVITIES:

A provision of law is repealed which permits state public officers and public employees to authorize voluntary deductions from their wages or salaries for political committees. *(Section 26.)*

No employer or labor organization may increase the salary of an officer or employee or give an emolument with the intention that it be contributed to a candidate, political committee, or political party or political committee. Nor may an employer or labor organization discriminate against an officer or employee for certain political activities. A portion of an employee's salary or wages may be diverted to a political committee only upon the written, annual request of the employee. Documents regarding such diversions and the written authorizations must be available for public inspection an must be delivered to the Public Disclosure Commission upon its request. *(Section 8.)*

No state official or official's agent may knowingly solicit a contribution from an employee in the official's agency. No state official or employee may discriminate against an employee or applicant for employment in civil service based on the person's making or failing to make certain political contributions. *(Section 15.)*

A labor organization may not use agency shop fees paid by non-members to make contributions or expenditures for an election or for a political committee unless the non-member authorizes such a use. *(Section 16.)*

No person may solicit from any other person money or property as consideration for an endorsement, article, or other news media communication for or against a candidate, committee, or political party. *(Section 17.)*

INDEPENDENT EXPENDITURES:

Certain notices must be contained in any advertising provided by independent expenditure. Included must be a listing of the top five contributors to the independent campaign. A person or entity making independent expenditures by mailing 1000 or more nearly identical pieces of political advertising must, within two working days of the mailing, file an example of the advertising with the county elections officer. *(Sections 22 & 23.)*

OTHER:

All amounts listed in the public disclosure law must be adjusted for inflation every two years and rounded off. The Commission must conduct a sufficient number of audits to provide a statistically valid finding regarding the degree of compliance with the provisions of the disclosure law by all persons required to file with the Commission. *(Sections 9 & 29.)*

Requirements for reporting the receipt of gifts by public officials are altered. *(Sections 30 & 31.)* When a lobbyist's disclosure report lists a person as having received a contribution, that person must be given a copy of the report or list. *(Section 32.)*

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EXHIBIT D p4